

§ 430.38

(i) That no further payments will be made to the State (or that payments will be made only for those portions or aspects of the program that are not affected by the noncompliance); and

(ii) That the total or partial withholding will continue until the Administrator is satisfied that the State's plan and practice are, and will continue to be, in compliance with Federal requirements.

(2) CMS withholds payments, in whole or in part, until the Administrator is satisfied regarding the State's compliance.

§ 430.38 Judicial review.

(a) *Right to judicial review.* Any State dissatisfied with the Administrator's final determination on approvability of plan material (§ 430.18) or compliance with Federal requirements (§ 430.35) has a right to judicial review.

(b) *Petition for review.* (1) The State must file a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, within 60 days after it is notified of the determination.

(2) The clerk of the court will file a copy of the petition with the Administrator and the Administrator will file in the court the record of the proceedings on which the determination was based.

(c) *Court action.* (1) The court is bound by the Administrator's findings of fact if they are supported by substantial evidence.

(2) The court has jurisdiction to affirm the Administrator's decision, to set it aside in whole or in part, or, for good cause, to remand the case for additional evidence.

(d) *Response to remand.* (1) If the court remands the case, the Administrator may make new or modified findings of fact and may modify his or her previous determination.

(2) The Administrator will certify to the court the transcript and record of the further proceedings.

(e) *Review by the Supreme Court.* The judgment of the appeals court is subject to review by the U.S. Supreme Court upon certiorari or certification, as provided in 28 U.S.C. 1254.

42 CFR Ch. IV (10-1-14 Edition)

§ 430.40 Deferral of claims for FFP.

(a) *Requirements for deferral.* Payment of a claim or any portion of a claim for FFP is deferred only if—

(1) The Administrator or current Designee questions its allowability and needs additional information to resolve the question; and

(2) CMS takes action to defer the claim (by excluding the claimed amount from the grant award) within 60 days after the receipt of a Quarterly Statement of Expenditures (prepared in accordance with CMS instructions) that includes that claim.

(b) *Notice of deferral and State's responsibility.* (1) Within 15 days of the action described in paragraph (a)(2) of this section, the current Designee sends the State a written notice of deferral that—

(i) Identifies the type and amount of the deferred claim and specifies the reason for deferral; and

(ii) Requests the State to make available all the documents and materials the regional office then believes are necessary to determine the allowability of the claim.

(2) It is the responsibility of the State to establish the allowability of a deferred claim.

(c) *Handling of documents and materials.* (1) Within 60 days (or within 120 days if the State requests an extension) after receipt of the notice of deferral, the State must make available to the regional office, in readily reviewable form, all requested documents and materials except any that it identifies as not being available.

(2) Regional office staff usually initiates review within 30 days after receipt of the documents and materials.

(3) If the current Designee finds that the materials are not in readily reviewable form or that additional information is needed, he or she promptly notifies the State that it has 15 days to submit the readily reviewable or additional materials.

(4) If the State does not provide the necessary materials within 15 days, the current Designee disallows the claim.

(5) The current Designee has 90 days, after all documentation is available in readily reviewable form, to determine the allowability of the claim.

(6) If the current Designee cannot complete review of the material within 90 days, CMS pays the claim, subject to a later determination of allowability.

(d) *Effect of decision to pay a deferred claim.* Payment of a deferred claim under paragraph (c)(6) of this section does not preclude a subsequent disallowance based on the results of an audit or financial review. (If there is a subsequent disallowance, the State may request reconsideration as provided in paragraph (e)(2) of this section.)

(e) *Notice and effect of decision on allowability.* (1) The Administrator or current Designee gives the State written notice of his or her decision to pay or disallow a deferred claim.

(2) If the decision is to disallow, the notice informs the State of its right to reconsideration in accordance with 45 CFR part 16.

[53 FR 36571, Sept. 21, 1988, as amended at 77 FR 31507, May 29, 2012]

§ 430.42 Disallowance of claims for FFP.

(a) *Notice of disallowance and of right to reconsideration.* When the Administrator or current Designee determines that a claim or portion of claim is not allowable, he or she promptly sends the State a disallowance letter that includes the following, as appropriate:

(1) The date or dates on which the State's claim for FFP was made.

(2) The time period during which the expenditures in question were made or claimed to have been made.

(3) The date and amount of any payment or notice of deferral.

(4) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were computed.

(5) Findings of fact on which the disallowance determination is based or a reference to other documents previously furnished to the State or included with the notice (such as a report of a financial review or audit) which contain the findings of fact on which the disallowance determination is based.

(6) Pertinent citations to the law, regulations, guides and instructions supporting the action taken.

(7) A request that the State make appropriate adjustment in a subsequent expenditure report.

(8) Notice of the State's right to request reconsideration of the disallowance and the time allowed to make the request.

(9) A statement indicating that the disallowance letter is the Department's final decision unless the State requests reconsideration under paragraph (b)(2) or (f)(2) of this section.

(b) *Reconsideration of a disallowance.* (1) The Administrator will reconsider Medicaid disallowance determinations.

(2) To request reconsideration of a disallowance, a State must complete the following:

(i) Submit the following within 60 days after receipt of the disallowance letter:

(A) A written request to the Administrator that includes the following:

(I) A copy of the disallowance letter.

(2) A statement of the amount in dispute.

(3) A brief statement of why the disallowance should be reversed or revised, including any information to support the State's position with respect to each issue.

(4) Additional information regarding factual matters or policy considerations.

(B) A copy of the written request to the Regional Office.

(C) Send all requests for reconsideration via registered or certified mail to establish the date the reconsideration was received by CMS.

(ii) In all cases, the State has the burden of documenting the allowability of its claims for FFP.

(iii) Additional information regarding the legal authority for the disallowance will not be reviewed in the reconsideration but may be presented in any appeal to the Departmental Appeals Board under paragraph (f)(2) of this section.

(3) A State may request to retain the FFP during the reconsideration of the disallowance under section 1116(e) of the Act, in accordance with § 433.38 of this subchapter.

(4) The State is not required to request reconsideration before seeking review from the Departmental Appeals Board.